

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

|                                 |          |                        |
|---------------------------------|----------|------------------------|
| <b>UNITED STATES OF AMERICA</b> | <b>:</b> | <b>CRIMINAL ACTION</b> |
|                                 |          | <b>NO. 05-709-1</b>    |
| <b>v.</b>                       | <b>:</b> |                        |
|                                 | <b>:</b> | <b>CIVIL ACTION</b>    |
| <b>JOHN PURCELL</b>             | <b>:</b> | <b>NO. 08-473</b>      |
| <b>a/k/a "Jack Purcell"</b>     | <b>:</b> |                        |

**O R D E R**

AND NOW, this 21st day of October, 2009, upon consideration of Petitioner's *Pro Se* Motion to Vacate, Set Aside, and/or Correct Sentence, and Authority in Support Thereof, Brought in Accordance with 28 U.S.C. § 2255 (Document No. 130, filed January 30, 2008), and the related submissions of the parties, and Petitioner's Motion for Discovery Pursuant to Rule 6(a) of the Rules Governing § 2255 Proceedings (Document No. 137, filed April 8, 2008), as supplemented, and the related submissions of the parties, following a hearing on February 24, 2009, for the reasons stated in the attached Memorandum, **IT IS ORDERED** that Petitioner's *Pro Se* Motion to Vacate, Set Aside, and/or Correct Sentence, and Authority in Support Thereof, Brought in Accordance with 28 U.S.C. § 2255 is **GRANTED IN PART** and **DENIED IN PART**, as follows:

1. That part of the Motion in which defendant claims ineffective assistance of counsel for failure to consult with defendant regarding his direct appeal is **GRANTED**, and defendant is granted leave to file and serve a notice of appeal *nunc pro tunc* within thirty (30) days of the date of this Order;
2. That part of the Motion in which defendant claims ineffective assistance of counsel for failure to properly advise defendant with regard to his sentencing exposure and for failure to

pursue plea negotiations with the government is **DENIED**; and,

3. The Court **ISSUES** a certificate of appealability with respect to the claim in the § 2255 Motion that trial counsel was ineffective for failing to properly advise defendant with regard to his sentencing exposure and for failing to pursue plea negotiations with the government.

**IT IS FURTHER ORDERED** that *pro se* petitioner's Motion for Discovery, Pursuant to Rule 6(a) of the Rules Governing § 2255 Proceedings, as supplemented, is **GRANTED IN PART** and **DENIED IN PART**. The Motion is **GRANTED** with respect to defendant's request for "any and all memoranda, hand books and other writings detailing the government's policies concerning the filing of 851 Informations" not previously produced and "any and all memoranda, notes or other writings concerning plea discussions or the filing of 851 Information in the underlying matter." The Discovery Motion is **DENIED** with respect to defendant's request for "Information concerning the identity of cases in which defendants were eligible for enhancement under 21 U.S.C. § 851, but in which such enhancement was withheld. To the extent that the Court has granted defendant's Discovery Motion, the government shall **PROVIDE** defendant and the Court with copies of the requested materials within ten (10) days of the date of this Order. Defendant is granted leave to file within twenty (20) days of the date of this Order a motion for reconsideration of this Memorandum and Order if warranted by the newly discovered evidence produced by the government.

**BY THE COURT:**

/s/ **Jan E. DuBois**

---

**JAN E. DUBOIS, J.**